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L. E. MUMFORD BANKING CO. v. FARMERS' & MERCHANTS' BANK OF KILBARNOCK, Inc.

June 11, 1914.

[82 S. E. 112.]

1. Pleading (§ 151*)—Affidavit of Defense—Statutory Provisions.

—The purpose of Code 1904, § 3286, providing that, in assumpsit on a contract to pay money, no plea in bar shall be received, or inquiry of damages made, unless defendant file with the plea an affidavit denying plaintiff's claim, is to prevent delay to plaintiff by continuances on dilatory pleas when no real defense exists, and to require defendant to make oath to his defense before his plea will be received.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 302; Dec. Dig. § 151.* 11 Va.-W. Va. Enc. Dig. 224.]

2. Pleading (§ 410*)—Affidavit of Defense—Statutory Provisions

—**Waiver.**—The requirement of Code 1904, § 3286, providing that, in an action of assumpsit, no plea in bar shall be received, unless defendant files with the plea an affidavit denying plaintiff's claim, is imposed for the benefit of plaintiff, who may waive it, expressly or by implication, or he may by his conduct be estopped to take advantage thereof.

[Ed. Note.—For other cases, see Pleading, Dec. Dig. § 410.* 11 Va.-W. Va. Enc. Dig. 224.]

3. Pleading (§ 410*)—Affidavit of Defense—Statutory Provisions

—**Waiver.**—A plaintiff suing on a money demand, who requested a continuance of the case to the second day of the term before any appearance by defendant, who consented to the continuance, thereby waived his right to rely on Code 1904, § 3286, requiring defendant to file an affidavit with his plea, and, where the court adjourned the term on the first day thereof, plaintiff was not entitled to a judgment, because the affidavit was not filed at that term.

[Ed. Note.—For other cases, see Pleading, Dec. Dig. § 410.* 11 Va.-W. Va. Enc. Dig. 224.]

4. Jury (§ 92*)—Disqualification of Jurors—Indebtedness of Jurors to Party—Effect.—That four jurors were indebted to a party to the suits as disclosed by their examination did not disqualify them, where they stated that they could give the parties a fair and impartial trial, and were not sensible of any bias or prejudice for or against either party.

[Ed. Note.—For other cases, see Jury, Cent. Dig. §§ 420-422; Dec. Dig. § 92.* 9 Va.-W. Va. Enc. Dig. 37.]

5. Banks and Banking (§ 105*)—Authority of Officers—Evidence.—The directors of a bank operating branch banks adopted a resolution for the appointment of a committee to dispose of the branch

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

banks. The committee, which included the president of the bank, met third persons, who had no knowledge of the resolution, to devise plans for the establishment of an independent bank to take over the business of a branch bank. The plan agreed on contemplated the organization of a new bank to take over the assets and assume the liabilities of the branch bank, except that designated notes held by the branch bank and carried on its books as a resource should not be included. Subsequently the new bank was chartered, and the president of the old bank agreed to take care of the designated notes which should be carried on the books of the new bank. The president of the old bank had alone established the branch banks, and had exercised exclusive management of them, and people dealing with the branch banks looked to the president alone for authority to transact business, and he had made all contracts connected with the bank's business, without any restriction on his powers. The president of the old bank, at the request of the officers of the new bank, executed an instrument confirming the understanding between the two banks in reference to the designated notes. Held that, on the issue of the authority of the president to agree that the designated notes should be excepted from the transfer and retained by the old bank, instructions that the act of the president in contracting with the new bank as to the designated notes was void, unless the old bank intentionally accepted the benefits thereof, without inquiry, or ratified the contract, and that one who accepts the benefits of the contract made by an unauthorized agent is bound thereby, were sufficiently favorable to the old bank, and it could not complain of a verdict that it was bound by the agreement.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 249-252; Dec. Dig. § 105.* 2 Va.-W. Va. Enc. Dig. 299.]

6. Trial (§ 267*)—Instructions—Ignoring Issues.—A requested instruction which is predicated only on a part of the evidence, and which embraces only one party's theory of the case, and wholly ignoring a material part of the evidence and the adverse party's theory of the case, is properly modified so as to embrace all the evidence and the theories of both parties.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 668-672, 674; Dec. Dig. § 267.* 7 Va.-W. Va. Enc. Dig. 715.]

7. Banks and Banking (§ 228*)—Officers—Authority to Make Contracts—Question for Jury.—Whether the president of a bank operating branch banks had authority to make a contract alone with a new bank, taking over the assets, and assuming the liabilities of a branch bank, held, under the evidence, for the jury.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 841, 874; Dec. Dig. § 228.* 2 Va.-W. Va. Enc. Dig. 299.]

8. Banks and Banking (§ 228*)—Contracts—Ratification.—Whether

a bank operating branch banks ratified a contract made by its president with a new bank, taking over the assets of a branch bank, and assuming its liabilities, held, under the evidence, for the jury.

[Fd. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 841, 874; Dec. Dig. § 228.* 2 Va.-W. Va. Enc. Dig. 302.]

9. Corporations (§ 400*)—Officers—“Authority.”—The authority of an officer of a corporation is that which the corporation holds him out to the public and those dealing with it as possessing, and no secret limitations are binding on third persons dealing with the officer as the representative of the corporation.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 1587, 1590, 1591; Dec. Dig. § 400.* 10 Va.-W. Va. Enc. Dig. 566.]

For other definitions, see Words and Phrases, vol. 1, pp. 646-648.]

Error to Circuit Court, Lancaster County.

Action by the L. E. Mumford Banking Company against the Farmers' & Merchants' Bank of Kilmarnock, Incorporated. There was a judgment for defendant, and plaintiff brings error. Affirmed.

James E. Heath, Jr., of Norfolk, for plaintiff in error.

J. W. Chinn, Jr., of Warsaw, and *T. J. Downing*, of Lancaster, for defendant in error.

COX *v.* CASKIE.

June 11, 1914.

[82 S. E. 118.]

Judgment (§ 866*)—Revival—Limitations.—Under Code 1904, § 3577, providing that scire facias to revive a judgment may be sued out within 20 years after the return of execution, except in case it is against a personal representative of a decedent, when it shall be brought within 5 years from the qualification of such representative, scire facies to revive a judgment recovered against a decedent when sued out within 20 years after the last return of execution, and within 5 years after appointment of an administrator with the will annexed, is within time, notwithstanding, before the appointment of the administrator, the estate, which consisted wholly of real property, had been committed to the sheriff, for the appointment of the sheriff did not start the running of limitations for the benefit of defendant; the statute referring to the representative's own appointment.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 1603-1607; Dec. Dig. § 866.* 8 Va.-W. Va. Enc. Dig. 613.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.